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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,614	08/28/2003	Stephen P. Craig	21591	5281

7590 05/04/2004

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EXAMINER

ALIMENTI, SUSAN C

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/649,614

Applicant(s)

CRAIG, STEPHEN P.

Examiner

Susan C. Alimenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10, 13 and 14 is/are rejected.
- 7) ☒ Claim(s) 9, 11 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to because they are informal in nature. All black background spots should be removed, and all reference characters should be typed since many present in the drawing are illegible. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show how element 15 is incorporated into the structure as viewed in Figure 1, as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 11 recites the limitation "said last-mentioned end" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 1-3 and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glassman (US 3,766,667).

Glassman discloses the claimed invention except it is not positively disclosed what type of material it is made out of. Glassman's device comprises a plurality of slat-like members, i.e. B-6, having therein a plurality of holes 30. Pegs 12 are inserted into said holes 30 where desired by the user. Regarding claims 1, and 13-14, member B-6 has 6 holes wherein three pegs could be inserted into 3 of said holes, while the symmetrically opposite holes are left void.

Regarding claims 3-5, 7-8, 10 when Glassman's device is oriented as seen in Figure 8, the moisture retaining means is defined as the indentation created by the combination of hole 30 and peg 12. Regarding claims 4, 8 and 10, said indentation is in the form of a depression, slanted downward and extends over at least *a substantial part* of the length of said slat-like member. Similarly regarding claims 5 and 7 the depression is symmetrical and curvilinear in shape.

Regarding the claim that the device is made of plastic through injection molding, Glassman is non-specific as to the material in which his device is made from. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make Glassman's device out of plastic, since it has been held to be within the general skill of a worker

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in the art to select a known material on the basis of it's suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

7. Regarding claim 6, Glassman discloses the claimed invention except the moisture retaining means is not triangular in shape. It would have been obvious to one having ordinary skill in the art at the time the invention was made to change the shape of pegs 12 and holes 30, since it has been held that there is no invention in merely changing the shape or form of an article without changing its function except in a design patent. Eskimo Pie Corp. V. Levous et al, 3 USPQ 23.

Allowable Subject Matter

8. Claims 9, and 11-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

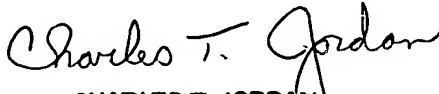
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 703-306-0360. The examiner can normally be reached on Monday-Friday, 9am-5pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T. Jordan can be reached on 703-306-4159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SCA


CHARLES T. JORDAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600